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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,115	07/18/2003	Michel John Arthur Groux	88265-6859	1635
29157	7590	09/07/2006		EXAMINER
BELL, BOYD & LLOYD LLC P. O. BOX 1135 CHICAGO, IL 60690-1135				PEARSE, ADEPEJU OMOLOLA
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/622,115	GROUX ET AL.
	Examiner	Art Unit
	Adepeju Pearse	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 June 2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 3-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 3-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Specification***

The disclosure is objected to because of the following informalities: The specification refers back to claim 1 (see page 1, lines 28-29). It is suggested that applicant modify this language. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1,<sup>3-</sup>17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original claims as filed read on a milk product that foams rather than a milk-containing product that foams as instantly claimed. It is suggested to remove “beverage foaming” in the preamble of claims 1 and 12.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1~~, 5~~, 8 and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Jonas (US Pat. No. 4,012,533). The rejections and reference are incorporated as cited in the prior office action.

*Response to Arguments*

6. Applicant's arguments filed 6/19/2006 have been fully considered but they are not persuasive. Applicant argues that Jonas failed to disclose every element of the present claims. However, Jonas discloses that the topping is whipped using a planetary mixer using a wire whip to form the foam/whipped composition (col 9 lines 65-67). In addition as previously cited in the previous office action, Jonas discloses similar components at the weight ranges instantly claimed; it is inherent that the composition would function as a beverage foaming milk product as claimed.

7. Applicant argues that Jonas discloses a multipurpose whipped dessert which maybe consumed in the frozen state as an ice cream type product or alternatively in the thawed state as a whipped topping and neither teaches a beverage foaming milk product for example as a coffee whitener/foamer. However, Jonas teaches that the whipped topping disclosed maybe used for various foods, besides whipped toppings are well known in the beverage industry with beverages such as hot chocolates. In addition, Jonas discloses similar components at the weight ranges instantly claimed; it is inherent that the composition would function as a beverage foaming milk product as claimed.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 3-4, 6-7, 9, 15 and 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Jonas in view of Gonsalves et al, Thompson and Lynch. The rejections and references are incorporated as cited in the prior office action.

11. Applicant argues that the patentability of claim 1 is moot, however as stated above, Jonas discloses that the topping is whipped using a planetary mixer using a wire whip to form the foam/whipped composition (col 9 lines 65-67). In addition as previously cited in the previous office action, Jonas discloses similar components at the weight ranges instantly claimed; it is inherent that the composition would function as a beverage foaming milk product as claimed. Therefore, the cited art teaches the elements of claims 3-4, 6-7, 9, 15 and 17.

12. Regarding claims 12-14 and 16, as stated above, Jonas discloses similar components at the weight ranges instantly claimed; it is inherent that the composition would function as a beverage foaming milk product as claimed. In addition, applicant asserts that Gonsalves teaches away from the present claim, however, preference over non-dairy does not exclude dairy products. Applicant is reminded that Jonas is the primary reference and Gonsalves, Thompson,

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and Lynch teach the elements not disclosed as cited in the prior office action. In addition, applicant asserts that Lynch is directed to a dairy-free non-fat whipped topping. However Lynch teaches low fat whipped toppings and applicant has not excluded non-dairy products as instantly claimed, as a matter of fact applicant discloses in page 2 lines 19-20, that non-dairy products are applicable.

*Conclusion*

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Peju Pearse



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